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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-208643

DATE: September 7, 1982

MATTER OF: Auto-Skate Company

DIGEST:

Protest by defaulted contractor of agency award of contract is untimely when filed more than 10 days after protester is informed of agency rejection of its bid because price offered exceeded terminated contract price.

Auto-Skate Company protests the rejection of its bid under invitation for bids (IFB) No. DLA100-82-B-0809 issued by the Defense Personnel Support Center, Philadelphia, Pennsylvania. According to Auto-Skate, it was informed by telephone not later than July 23, 1982, that its bid was being rejected as "non-responsive" by the agency because "the price [bid] was higher than that of [its] previously defaulted contract."

The protest is untimely. Our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(2) (1982), require that a protest be received by either the contracting agency or our Office within 10 days after the basis for protest was known or should have been known, whichever is earlier. Here, it appears that Auto-Skate was specifically informed by the contracting officer not later than July 23, 1982 of the agency's rejection of its bid which, although lower than that of any other bidder, was higher than the terminated price of its defaulted contract. At this time, Auto-Skate became aware of the basis for its protest and was consequently required to file its protest within 10 days thereafter. While Auto-Skate requested further clarification from the agency on that date concerning the reasons for the rejection of its bid, once Auto-Skate had grounds for protest it could not toll the timeliness limitation because of its asserted need to obtain

further clarification. Advanced Marine Enterprises, Inc., B-196252.2, February 7, 1980, 80-1 CPD 106. Thus, since Auto-Skate's protest was not received in our Office until August 17, 1982, it is untimely. Time Oil Co., B-192180, July 7, 1978, 78-2 CPD 25.

In any event, it appears that the agency properly rejected Auto-Skate's bid since we have specifically held that a repurchase contract may not be awarded to the defaulted contractor at a price greater than the terminated contract price, because this would be tantamount to modification of the existing contract without consideration. See PRB Uniforms, Inc., 56 Comp. Gen. 976 (1977), 77-2 CPD 213. In this regard, Auto-Skate also argues that the other bids received are also "non-responsive" because the prices offered are excessive when compared to previous procurements. However, this allegation relates to whether the repurchase was conducted in a manner reasonably calculated to mitigate damages, an issue for resolution under the Disputes clause of the contract and therefore not for our consideration. See Kaufman De Dell Printing, Inc., B-186158, April 8, 1976, 76-1 CPD 239.

Accordingly, we dismiss the protest.

Harry R. Van Cleve
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Acting General Counsel